

**PUBLIC RECORDS POLICY FOR
THE CHATTANOOGA-HAMILTON COUNTY AIR POLLUTION CONTROL BOARD
and
THE CHATTANOOGA-HAMILTON COUNTY AIR POLLUTION CONTROL BUREAU**

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for the Chattanooga-Hamilton County Air Pollution Control Board (“Board”) and the Chattanooga-Hamilton County Air Pollution Control Bureau (“Bureau”) is hereby adopted by the Chattanooga-Hamilton County Air Pollution Control Board to provide economical and efficient access to public records as provided under the Tennessee Public Records Act (“TPRA”) in Tenn. Code Ann. § 10-7-501, et seq.

The TPRA provides that all state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. See Tenn. Code Ann. § 10-7-503(a)(2)(A). Accordingly, the public records of the Board and the Bureau are presumed to be open for inspection unless otherwise provided by law.

Personnel of the Chattanooga-Hamilton County Air Pollution Control Bureau shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records of the Board or the Bureau. The Bureau maintains the public records of the Board. No provisions of this Policy shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Chattanooga-Hamilton County Air Pollution Control Bureau, shall be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for the Chattanooga-Hamilton County Air Pollution Control Bureau or to the Tennessee Office of Open Records Counsel (“OORC”).

This Policy is available for inspection and duplication in the office of the Chattanooga-Hamilton County Air Pollution Control Bureau at 6125 Preservation Drive, STE 140, Chattanooga, Tennessee 37416-3740. [This Policy is posted online at www.apcb.org]. This Policy shall be reviewed every two years.

This Policy shall be applied consistently throughout the various offices, departments, and/or divisions of the Chattanooga-Hamilton County Air Pollution Control Bureau and by the Board.

I. Definitions:

- A. Records Custodian: The office, official or employee lawfully responsible for the direct custody and care of a public record. See Tenn. Code Ann. § 10-7-503(a)(1)(C). The records custodian is not necessarily the original preparer or receiver of the record.
- B. Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. See Tenn. Code Ann. § 10-7-503(a)(1)(A).

- C. Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this Policy who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. See Tenn. Code Ann. § 10-7-503(a)(1)(B). The Public Records Request Coordinator may also be a records custodian.
- D. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

II. Requesting Access to Public Records

- A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- B. Requests for inspection only cannot be required to be made in writing. The PRRC should request a mailing [or email] address from the requestor for providing any written communication required under the TPRA.
- C. Requests for inspection may be made orally or in writing using the attached Public Records Request Form at 6125 Preservation Drive, STE 140, Chattanooga, Tennessee 37416-3740 or by phone at (423) 643-5970.
- D. Requests for copies, or requests for inspection and copies, may be made in writing using the attached Public Records Request Form at 6125 Preservation Drive, STE 140, Chattanooga, Tennessee 37416-3740.
- E. Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license (or alternative acceptable form of ID) is required as a condition to inspect or receive copies of public records.
- F. Public notices of the Board and its committee meetings, legal notices required for publication of proposed permitting actions of the Bureau, and proposed changes to regulatory or non-regulatory provisions of the rules or plans relating to achieving and maintaining air quality standards in Hamilton County, Tennessee, can be found on the Bureau's website at www.apcb.org.

III. Responding to Public Records Requests

- A. Public Record Request Coordinator
 - 1. The PRRC shall review public record requests and make an initial determination of the following:
 - a. If the requestor provided evidence of Tennessee citizenship;
 - b. If the records requested are described with sufficient specificity to identify them; and
 - c. If the Governmental Entity is the custodian of the records.

2. The PRRC shall acknowledge receipt of the request and take any of the following appropriate action(s):
 - a. Advise the requestor of this Policy and the elections made regarding:
 - i. Proof of Tennessee citizenship;
 - ii. Form(s) required for copies;
 - iii. Fees (and labor threshold and waivers, if applicable); and
 - iv. Aggregation of multiple or frequent requests.
 - b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
 - i. The requestor is not, or has not presented evidence of being, a Tennessee citizen (*if proof of citizenship is required*).
 - ii. The request lacks specificity. (Offer to assist in clarification)
 - iii. An exemption makes the record not subject to disclosure under the TPRA. (Provide the exemption in written denial)
 - iv. The Governmental Entity is not the custodian of the requested records.
 - v. The records do not exist.
 - c. If appropriate, contact the requestor to see if the request can be narrowed.
 - d. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known.
3. The designated PRRCs are:
 - Primary: Amber Boles, Public Relations Coordinator – aboles@chattanooga.gov
 - Secondary: Katherine Robertson, Executive Assistant – krobertson@chattanooga.gov
 - Designate Room Representative*: James Holloway, Operations Manager – jholloway@chattanooga.gov
*unless another representative, as chosen by the PRRC, is appropriate for the requested records
4. Contact information:
 - Address: 6125 Preservation Drive, STE 140, Chattanooga, Tennessee

37416-3740

- Phone number: (423) 643-5970
- Fax number: (423) 643-5972
- Website: www.apcb.org

5. The PRRCs shall report to the governing authority on an annual basis about the Chattanooga-Hamilton County Air Pollution Control Bureau's compliance with the TPRA pursuant to this Policy and shall make recommendations, if any, for improvement or changes to this Policy.

B. Records Custodian

1. Upon receiving a public records request, a records custodian shall promptly make requested public records available in accordance with Tenn. Code Ann. § 10-7-503. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, counsel, or the OORC.
2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian shall, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form which is attached, based on the form developed by the OORC.
3. If a records custodian denies a public record request, he or she shall deny the request in writing as provided in Section III.A.2.b using the Public Records Request Response Form.
4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian shall use the Public Records Request Response Form to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian should contact the requestor to see if the request can be narrowed.
5. If a records custodian discovers records responsive to a records request were omitted, the records custodian should contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the records custodian should coordinate with counsel or other appropriate parties regarding review and redaction of records.
2. Whenever a redacted record is provided, a records custodian should provide

the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

IV. Inspection of Records

- A. There shall be no charge for inspection of open public records.
- B. The location for inspection of records within the offices of the Chattanooga-Hamilton County Air Pollution Control Bureau should be determined by either the PRRC or the records custodian.
- C. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location. Appointments should be made in advance for inspection and review to be completed between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday excluding holidays.

V. Copies of Records

- A. A records custodian shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- B. Copies will be available for pickup at a location specified by the records custodian at 6125 Preservation Drive, STE 140, Chattanooga, Tennessee 37416-3740.
- C. Upon payment for postage, copies will be delivered to the requestor's home address by the United States Postal Service. Additional permitted means of delivery are UPS or FedEx or e-mail where possible.
- D. A requestor may be allowed to make copies of records with personal equipment, provided it does not cause an unreasonable interference with the Bureau's operations or require the use of the Bureau's utilities.

VI. Fees and Charges and Procedures for Billing and Payment

- A. Fees and charges for copies of public records should not be used to hinder access to public records. No charges will be assessed for copies and duplicates unless they exceed \$2.00.
- B. Records custodians shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.
- C. When fees for copies and labor do not exceed \$5.00, the fees may be waived.

Requests for waivers for fees above \$5.00 must be presented to Robert Colby, Director of the Bureau, who is authorized to determine if such waiver is in the best interest of the Chattanooga-Hamilton County Air Pollution Control Bureau and for the public good. Fees associated with aggregated records requests will not be waived.

- D. Fees and charges for copies are as follows (*if higher than the amounts authorized by the OORC Schedule of Reasonable Charges, documentation should be attached*):
1. \$0.15 per page for letter-size and legal-size black and white copies.
 2. \$0.50 per page for letter-size and legal-size color copies.
 3. Other: Labor to access archived files and retrieve documents from files.
 4. Labor when time exceeds 0.25 hours.
 5. If an outside vendor is used, the actual costs assessed by the vendor.
- E. No duplication costs will be charged for requests for less than \$2 or 12 black and white pages or 4 color pages where no labor time for searching has been expended.
- F. Payment is to be made in cash, or by personal check or money order made payable to the Chattanooga-Hamilton County Air Pollution Control Bureau presented to the cashier.
- G. Payment in advance will be required when costs are estimated to exceed \$20.00

I. Aggregation of Frequent and Multiple Requests

1. The Chattanooga-Hamilton County Air Pollution Control Bureau will [not] aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than (4) requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).
2. If aggregating:
 - a. The level at which records requests will be aggregated is four (4) requests from the Bureau or the Board or any combination thereof within one month concerning the same materials.
 - b. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.
 - c. Routinely released and readily accessible records excluded from aggregation include, but are not limited to:
 - Information on the Bureaus' website www.apcb.org
 - Daily air quality reports

PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: Chattanooga-Hamilton County Air Pollution Control Bureau
Amber Boles
(423) 643-5970
aboles@chattanooga.gov

From: [Insert Requestor's Name and Contact Information (include an address for any TPRA required written response)]

Is the requestor a Tennessee Citizen? Yes No

Request: Inspection (The TPRA does not permit fees or require a written request for inspection only.)

Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed \$_____? If so, initial here: _____

Delivery preference: On-Site Pick-Up USPS First-Class Mail
 Electronic Other:_____

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

Signature of Requestor and Date Submitted
Received

Signature of Public Records Request Coordinator and Date

PUBLIC RECORD REQUEST RESPONSE FORM
Chattanooga-Hamilton County Air Pollution Control Bureau
6125 Preservation Drive, Ste 140, Chattanooga, TN 37416-3740
[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s)¹ indicated below:

- The public record(s) responsive to your request will be made available for inspection: Location: _____
Date & Time: _____
- Copies of public record(s) responsive to your request are:
 - Attached;
 - Available for pickup at the following location: _____; or
 - Being delivered via: USPS First-Class Mail Electronically Other: _____
- Your request is denied on the following grounds:
 - Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
 - No such record(s) exists or this office does not maintain record(s) responsive to your request.
 - No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
 - You are not a Tennessee citizen.
 - You have not paid the estimated copying/production fees.
 - The following state, federal, or other applicable law prohibits disclosure of the requested records:
_____.
- It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
 - It has not yet been determined that records responsive to your request exist; or
 - The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: _____.

If you have any additional questions regarding your record request, please contact Amber Boles.

Sincerely,

Public Record Request Coordinator
Amber Boles
Public Relations Coordinator
6125 Preservation Drive, Ste 140,
Chattanooga, TN 37416-3740
(423) 643-5970
aboles@chattanooga.gov

¹ If all requested records do not have the same response, so indicate.

POLICY CONSIDERATIONS

The Tennessee General Assembly declares that the Tennessee Public Records Act (“TPRA”) “shall be broadly construed to give the fullest possible access to public records.” See Tenn. Code Ann. § 10-7-505(d). Accordingly, unless there is a clear exception provided in law, all public records of a governmental entity are to be open to Tennessee citizens for inspection.

Records custodians must comply with the TPRA and their respective public records policies and rules. Tenn. Code Ann. § 10-7-506(a) grants records custodians the right to adopt and enforce reasonable rules governing the making of copies.

Adherence to the Model Public Records Policy developed by the Office of Open Records Counsel (“OORC”) is not mandatory. However, courts may consider adherence to guidance provided by the OORC in determining whether a denial of access to public records by a records custodian is willful. See Tenn. Code Ann. § 10-7-505(g). Additionally, adherence to the policies and guidelines of the OORC provides a safe harbor for records custodians. See the OORC’s Safe Harbor Policy.

- I. The TPRA authorizes a governmental entity to determine the following with respect to each entity’s public records policy:
 - A. Whether to respond to TPRA requests by persons who are not citizens of Tennessee;
 - B. Whether to require government-issued photo identification as a prerequisite to providing access to records;
 - C. Whether to require requests for copies to be in writing and on a specific form;
 - D. Whether to charge for copying and duplication costs, including labor, when requestors ask for copies or duplicates;
 - E. Whether to waive copying and duplication costs in certain circumstances; and
 - F. Whether to permit requestors to make copies or duplicates using their own devices, such as a cell phone camera. (Note that use of requestor-provided devices such as flash drives pose serious security concerns.)
- II. Prior to adopting a public records policy, a governmental entity should consider and determine the following:
 - A. Who or what is the “appropriate governing authority” responsible for approval of the policy as required by Tenn. Code Ann. § 10-7-503(g).
 - B. Who or what sub-entities or offices are to be covered by the policy.
 - C. Whether there are legal requirements, other than the TPRA, that require the governmental entity to provide public access to specific records.
 - D. What authority, other than the TPRA, exists for charging fees for copies and whether it is mandatory or discretionary.
 1. If no separate authority exists for duplication fees or copying fees, will fees be assessed for copies?

2. Will labor be charged when it exceeds one (1) hour (or will the governmental entity use a higher threshold)?
 3. Will waivers be permitted, and who should have the authority to make the decision to waive fees?
- E. Who, within the governmental entity, are “records custodians,” which are defined as “any office, official or employee of any governmental entity lawfully responsible for the direct custody and care of a public record” and whether there is a designated records officer or records archivist.
- F. What records the government entity creates or receives that are required by law or ordinance, or that occur in the transaction of official business, that would be subject to disclosure under the TPRA.
1. Are the records produced in physical or electronic format and where are they stored or maintained?
 2. If electronic, what capability exists to search and to securely electronically redact the records?
 3. If in physical form, how are the records filed or cross-referenced?
 4. If on microfilm, microfiche or other legacy formats, how are the records filed or cross-referenced? Is equipment available to access/read the records?
- G. What, if any, exemptions apply to the governmental entity’s public records or the information in the records making them confidential.
- H. What means of communication exist for the public to communicate with the governmental entity.
- I. What are the governmental entity’s existing policies on:
1. Government transparency;
 2. How to respond to TPRA requests, including what fees to charge;
 3. Records management, including:
 - a. Retention, maintenance, and destruction;
 - b. Records made or received “off-site” or using personal devices; and
 - c. Monitoring of the accessibility and readability of records;
 4. Use of email and other electronic communication and social media;
 5. Use of personal devices in the work place;
 6. Securing of records upon the departure of an employee/official; and

7. Disaster recovery and planning.
- J. What resources are available for compliance with the TPRA?
1. What space is, or will be, available to requestors for physical inspection of records?
 2. Is a secure computer terminal (that does not allow access to confidential records) available for public inspection of electronic records?
 3. What is the governmental entity's capability to duplicate records? If the entity does not have internal capability, are there existing contracts with vendors or available duplication services to respond promptly to requests?
 4. What staffing and funding is available?
- K. What the governmental entity has or provides that may contain or produce records accessible pursuant to the TPRA, including:
1. Portable electronic devices such as cell phones, laptops, or tablets;
 2. Voice mail;
 3. Email accounts;
 4. Websites; and
 5. Social media accounts, such as Facebook or Twitter.
- L. Who should be appointed the Public Records Request Coordinator(s).
1. How will the appointment be disclosed internally and externally?
 2. What authority exists to require records custodians to respond to the coordinator?
- M. Whether Tennessee citizenship will be required for requests under the TPRA, and if so:
1. Will visual inspection of a Tennessee driver's license suffice or will a copy be kept?
 2. What forms of proof beyond a Tennessee driver's license will be accepted?
- N. Whether requests will be aggregated, whether by individual requestors or requestors acting in concert. See the OORC's Reasonable Charges for Frequent and Multiple Requests Policy.

Submitted to ACOG: November 8, 2016
Effective: January 20, 2017



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL**

SCHEDULE OF REASONABLE CHARGES

PURPOSE:

Pursuant to Tenn. Code Ann. § 8-4-604(a)(1), the Office of Open Records Counsel (“OORC”) is required to establish a schedule of reasonable charges a records custodian may use as a guideline to charge citizens requesting copies of public records. Additionally, Tenn. Code Ann. § 10-7-503(g) requires each governmental entity subject to the Tennessee Public Records Act (“TPRA”) to establish a written public records policy that includes a statement of any fees charged for copies of public records and the procedures for billing and payment. Accordingly, the following policy sets forth general guidelines for records custodians when assessing reasonable charges associated with record requests under the TPRA.

POLICY:

I. General Considerations

- A. Records custodians may not charge for inspection of public records except as provided by law.
- B. The following schedule of reasonable charges should not be interpreted as requiring records custodians to impose charges for copies of public records. Charges for copies of public records must be pursuant to a public records policy properly adopted by the governing authority of a governmental entity. See Tenn. Code Ann. § 10-7-503(g) and § 10-7-506(a).
- C. Application of an adopted schedule of charges shall not be arbitrary. Additionally, excessive fees and other rules shall not be used to hinder access to public records.
- D. A records custodian may reduce or waive charges, in whole or in part, in accordance with the governmental entity’s public records policy.
- E. A records custodian may require payment for copies before producing copies of the records.
- F. The TPRA does not distinguish requests for inspection of records based on intended use, be it for research, personal, or commercial purposes. Likewise, this Schedule of Reasonable Charges does not make a distinction in the charges assessed based on the purpose of a record request. However, other statutory provisions, such as Tenn. Code Ann. § 10-7-506(c), enumerate fees that may be assessed when specific documents are requested for a specific use. Any distinctions made, or waiver of charges permitted, based upon the type of records requested should be expressly set forth and permitted in the adopted public records policy.

- G. Records custodians shall provide a requestor an estimate of reasonable costs to provide copies of requested records.

II. Per Page Copying Charges

- A. For each standard 8½" x 11" or 8½" x 14" copy produced, a records custodian may assess a per page charge of up to 15 cents (\$0.15) for black and white copies and up to 50 cents (\$0.50) for color copies. If producing duplex (front and back) copies, a charge for two separate pages may be imposed for each single duplex copy.
- B. If the charge for color copies is higher than for black and white copies, and a public record is maintained in color but can be produced in black and white, the records custodian shall advise the requestor that the record can be produced in color if the requestor is willing to pay a charge higher than that of a black and white copy.
- C. If a governmental entity's actual costs are higher than those reflected above, or if the requested records are produced on a medium other than 8½" x 11" or 8½" x 14" paper, the governmental entity may develop its own charges. The governmental entity must establish a schedule of charges documenting "actual cost" and state the calculation and reasoning for its charges in a properly adopted policy. A governmental entity may charge less than those charges reflected above. Charges greater than 15 cents (\$0.15) for black and white copies and 50 cents (\$0.50) for color copies can be assessed or collected only when there is documented analysis of the fact that the higher charges represent the governmental entity's actual cost of producing such material, unless there exists another basis in law for such charges.

III. Additional Charges

- A. When assessing a fee for items covered under this section, records custodians shall utilize the most economical and efficient method of producing the requested records.
- B. A records custodian may charge its actual out-of-pocket costs for flash drives or similar storage devices on which electronic copies are provided. When providing electronic records, a records custodian may charge per-page costs only when paper copies that did not already exist are required to be produced in responding to the request, such as when a record must be printed to be redacted.
- C. It is presumed copies of requested records will be provided in person to a requestor when the requestor returns to the records custodian's office to retrieve the records.
- D. If a requestor chooses not to personally retrieve records and the actual cost of delivering the copies, in addition to any other permitted charges, have been paid by the requestor or otherwise waived pursuant to the public records policy, then a records custodian is obligated to deliver the copies via USPS First-Class Mail. It is within the discretion of a records custodian to agree to deliver copies of records through other means, including electronically, and to assess the costs related to such delivery.
- E. If it is not practicable or feasible for the records custodian to produce copies internally, the records custodian may use an outside vendor and charge the costs to the requester.

- F. If a records custodian is assessed a charge to retrieve requested records from archives or any other entity having possession of requested records, the records custodian may recover from the requestor the costs assessed for retrieval.

IV. Labor Charges

- A. A records custodian shall utilize the most cost efficient method of producing requested records. Accordingly, a records custodian should strive to utilize current employees at the lowest practicable hourly wage to fulfill public records requests for copies.
- B. "Labor" is the time (in hours) reasonably necessary to produce requested records, including the time spent locating, retrieving, reviewing, redacting, and reproducing records.
- C. "Labor threshold" is the first (1st) hour of labor reasonably necessary to produce requested material(s). A governmental entity may adopt a higher labor threshold than one (1) hour. A records custodian is only permitted to charge for labor exceeding the labor threshold established by the governmental entity.
- D. "Hourly wage of an employee" is based upon the base salary of the employee and does not include benefits. If an employee is not paid on an hourly basis, the hourly wage shall be determined by dividing the employee's annual salary by the required hours to be worked per year. For example, an employee who is expected to work a 37.5 hour workweek and receives \$39,000 in salary on an annual basis will be deemed to be paid \$20 per hour.
- E. In calculating labor charges, a records custodian should determine the total amount of labor for each employee and subtract the labor threshold from the labor of the highest paid employee(s). The records custodian should then multiply the amount of labor for each employee by each employee's hourly wage to calculate the total amount of labor charges associated with the request.

Example:

The hourly wage of Employee A is \$15.00. The hourly wage of Employee B is \$20.00. Employee A spends two (2) hours on a request. Employee B spends two (2) hours on the same request. The labor threshold is established at one (1) hour. Since Employee B is the highest paid employee, the labor threshold will be applied to the time Employee B spent producing the request. For this request, \$50.00 could be charged for labor. This is calculated by taking the number of hours each employee spent producing the request, subtracting the threshold amount, multiplying that number by the employee's hourly wage, and then adding the amounts together (i.e. Employee A (2 x \$15.00) + Employee B (1 x \$20.00) = \$50.00).

*Submitted to ACOG: November 8, 2016.
Effective: January 20, 2017*



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS
COUNSEL**

REASONABLE CHARGES FOR FREQUENT AND MULTIPLE REQUESTS

PURPOSE:

Tenn. Code Ann. § 8-4-604(a)(2) requires the Office of Open Records Counsel (“OORC”) to establish a policy related to reasonable charges a records custodian may charge for frequent and multiple requests for public records pursuant to the Tennessee Public Records Act (“TPRA”), Tenn. Code Ann. § 10-7-501, et seq. Accordingly, the following policy sets forth guidelines for assessing reasonable charges associated with the aggregation of multiple and frequent record requests by allowing records custodians to charge for labor and costs that may otherwise be waived when responding to a single record request.

It is within the discretion of each governmental entity to charge for frequent and multiple record requests. Any decision to charge should be consistent with the Schedule of Reasonable Charges promulgated by the OORC and reflected in the governmental entity’s public records policy.

POLICY:

I. Aggregation Policy

- A. Aggregation, as well as excessive fees and other rules, shall not be used to hinder access to public records. A records custodian may reduce or waive, in whole or in part, any charge in accordance with the governing entity’s public records policy.
- B. A governmental entity may include in its public records policy a rule whereby multiple or frequent records requests are aggregated for purposes of calculating charges for copies or duplicates of public records.
- C. A governmental entity may aggregate multiple public record requests made by a single requestor. A governmental entity may also aggregate public record requests made by multiple requestors, if the public records request coordinator determines the requestors are acting in concert with each other or as the agents of another person, entity, or organization.
- D. A governmental entity’s public record policy shall indicate the number of requests within a calendar month that will trigger aggregation; that amount must be no lower than four (4) requests. This amount is the aggregation threshold.
- E. A governmental entity’s public record policy shall specify the level at which records requests will be aggregated, whether for the entire governmental entity or by agency, department, office, or otherwise.

II. Charges for Aggregated Requests

- A. Once a records custodian reaches the aggregation threshold, the records custodian is no longer required to deduct the labor threshold set forth in the Schedule of Reasonable Charges or any other minimum charge per request threshold that would ordinarily be waived.
- B. When the aggregation threshold is met, a records custodian choosing to aggregate requests must inform the requestor(s) of the determination to aggregate and of the right of the requestor(s) to appeal the records custodian's decision to aggregate to the OORC.
- C. Requests for current records that are routinely released and readily accessible, such as agendas or meeting minutes, are exempt from this policy.
- D. Disputes regarding aggregation shall be brought to the OORC.

Submitted to ACOG: November 8, 2016
Effective: January 20, 2017



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS
COUNSEL**

SAFE HARBOR POLICY

PURPOSE: Tenn. Code Ann. § 8-4-604(a)(3) requires the Office of Open Records Counsel (“OORC”) to establish a safe harbor policy for records custodians who adhere to the policies and guidelines established by the OORC.

This policy should not be interpreted as requiring a records custodian to impose charges for copies of public records nor should it be interpreted as requiring records custodians to aggregate frequent and multiple requests. However, if a records custodian does decide to impose charges for copies, or to aggregate requests, this policy establishes that those fees are presumed to be reasonable when assessed in accordance with the policies and guidelines developed by the OORC.

POLICY:

Any labor fees and charges related to copying or duplicating public records are presumed reasonable if the fees and charges are set forth in the governmental entity’s public records policy and such fees and charges were developed in accordance with the provisions of the Schedule of Reasonable Charges.

The aggregation of frequent and multiple requests for copies of public records and any fees and charges resulting from aggregation are presumed to be reasonable if the fees and charges are set forth in the governmental entity’s public records policy and such fees and charges were developed in accordance with the provisions of the Reasonable Charges for Frequent and Multiple Requests Policy.

*Submitted to ACOG: November 8, 2016
Effective: January 20, 2017*



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS
COUNSEL**

INFORMAL ADVISORY OPINIONS

PURPOSE:

Tenn. Code Ann. § 8-4-601(b) provides that “the office of open records counsel shall answer questions and issue informal advisory opinions as expeditiously as possible to any person, including local government officials, members of the public and the media. Any opinion issued by the office of open records counsel shall be posted on the office's web site.” The following policy sets forth guidelines for issuing such informal advisory opinions.

POLICY:

The Office of Open Records Counsel (“OORC”) will issue informal advisory opinions on matters related to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501 et seq., and the Tennessee Open Meetings Act, Tenn. Code Ann. § 8-44-101 et seq., when the OORC determines the matter under advisement is broad enough in scope that issuing an informal advisory opinion would provide useful guidance and direction with respect to future inquiries regarding Tennessee’s public records or open meetings laws. The determination of whether to issue an informal advisory opinion will be made on a case-by-case basis at the discretion of Open Records Counsel.

In accordance with Tenn. Code Ann. § 8-4-601(b), informal advisory opinions issued by the OORC will be posted on the office’s website.

*Submitted to ACOG: November 8, 2016.
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**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL**

MEDIATION OF OPEN RECORDS ISSUES

PURPOSE:

Pursuant to Tenn. Code Ann. § 8-4-601(c), the Office of Open Records Counsel (“OORC”) is authorized to informally mediate and assist with the resolution of issues concerning the open records laws compiled in Title 10, Chapter 7 of the Tennessee Code Annotated. The following policy sets forth the guidelines and circumstances for mediation of open records issues by the OORC.

POLICY:

Mediation is the informal process through which a neutral party conducts discussions among disputing parties in order to enable the parties to reach a mutually acceptable agreement among themselves on any or all of the issues in dispute. The OORC may informally mediate and assist with the resolution of disputes when:

- I. The issues in dispute pertain to the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-501 et seq.¹;
- II. The disputing parties mutually consent to have the OORC informally mediate the dispute and agree to enter into mediation with the goal of resolving the matters; and
- III. The parties have both submitted a statement of the issues in dispute and their respective position on the issues.

If the aforementioned requirements are met, the OORC will schedule a time and place convenient for the parties to discuss the issues in dispute and work on informal resolution of the issues.

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¹ In accordance with Tenn. Code Ann. § 8-4-601(c), the Office of Open Records Counsel is only authorized to informally mediate issues concerning the Public Records Act.